



August 2, 1989

RECORDATION NO **16479** FILED 1425

AUG 14 1989 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

IteI Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000
(415) 781-1035 Fax

9-226A022

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

**Re: Lease Agreement dated as of July 17, 1989, between IteI
Rail Corporation and Canadian Pacific Limited**

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Lease Agreement under a new recordation number.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Canadian Pacific Limited (Lessee)
P.O. Box 5042, Windsor Station
Montreal, Quebec H3C 3E4
Canada

This Lease Agreement describes the terms and conditions by which equipment, set forth in subsequent schedules thereto, is leased.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Legal Department

AUG 14 1989 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement") is made as of this 17th day of July, 1989, between ITEL RAIL CORPORATION as the lessor ("Lessor") and CANADIAN PACIFIC LIMITED, as the lessee ("Lessee").

1. Scope of the Agreement

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor upon the terms and conditions set forth herein, certain items of equipment of the reporting marks, number, type, construction and other description set forth in any Equipment Schedules ("Schedule") executed by the parties concurrently herewith or from time to time or hereafter, and which are attached hereto and made a part of this Agreement. The word "Schedule" as used herein includes the Equipment Schedule or Equipment Schedules executed concurrently herewith and attached hereto, and any additional Equipment Schedules that may from time to time hereafter be executed by the parties and attached hereto, as the same may be amended by the parties from time to time, each of which when signed by both parties and attached hereto shall be a part of this Agreement. The items of equipment described on any Schedule are hereinafter called collectively the "Cars" and individually a "Car".*
- B. It is the intent of the parties to this Agreement that Lessor or its assignees shall at all times be and remain the Lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

This Agreement shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Agreement with respect to each Car described on each Schedule shall commence upon delivery to Lessee pursuant to Subsection 3.A ("Commencement Date") and shall expire as to all of the Cars described on any Schedule on the Expiration Date specified in such Schedule.

3. Delivery and Acceptance

- A. Lessee shall, at Lessor's expense, clean and remark the Cars in compliance with all applicable regulations. Each Car should be remarked in accordance with Association of American Railroad ("AAR") and National Transportation Act ("NTA") rules and regulations. Lessee hereby approves the specifications of the Cars delivered to it by Lessor. The Cars shall be moved to Lessee's lines at no cost to Lessee as soon as is consistent with mutual convenience and economy. Lessor warrants that, upon delivery, each Car shall meet or exceed

* The terms and provisions of each schedule, listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Agreement.

Handwritten signature/initials

specifications for interchange service as defined in the Association of American Railroad ("AAR") Field Manual ("Interchange Rules"). Each Car shall be delivered to Lessee's lines at a mutually agreeable interchange point(s) with all freight or other transportation charges to be for the account of Lessor. Each Car so delivered shall (i) be in good operation condition, ordinary wear and tear excepted and (ii) meet AAR Rule 88 requirements covering the Mechanical Requirements for acceptance of freight cars in interchange and all the requirements of CP Quality Standard for leased Freight cars, QAS 210. Lessee shall have the right to preinspect a sampling of such Cars at a mutually agreeable time and place prior to the acceptance of the Cars. Lessee shall have the right to inspect each Car upon such Car's delivery to Lessee's lines and, if not acceptable to Lessee, Lessee shall notify Lessor in writing within ten (10) days of such receipt as to the reason why such Car is not acceptable and shall hold such Car for inspection and disposition by Lessor. Lessor shall have the option to perform repairs to correct the condition(s) that made such Car unacceptable to Lessee or to replace such Car with another similar Car or to delete the Car from the Schedule. All costs, including transportation costs associated with making such Car acceptable to Lessee shall be for Lessor's account. Acceptance by Lessee of any Car onto its lines after inspection thereof shall constitute delivery ("Delivery"); provided, however, that any per diem and mileage revenue earned on such Car prior to Delivery shall be for the account of Lessor. Lessor and Lessee shall cooperate with each other to facilitate the delivery and acceptance of each Car.

- B. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Cars with cars of similar design, age and quality upon not less than sixty (60) days' prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.

4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Cars, all documents relating to the registration, maintenance and record keeping functions with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to: (i) preparation of appropriate AAR interchange agreements with respect to the Cars; (ii) registration of the Cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the ICC and any other regulatory agencies with respect to the Cars. Lessee shall register each Car in UMLER in such a manner that Lessor, or its agent, is allowed reasonable access to any required information with regard to each Car.
- B. Lessee shall keep records of and monitor the use and movements of the Cars in accordance with AAR rules and practices. All record keeping shall be separately recorded and maintained in a form suitable for reasonable inspection by Lessor from time to time during Lessee's regular business hours. Lessee shall supply Lessor with copies of

such information, records and other data pertinent hereto as Lessor may reasonably request.

5. Maintenance

- A. Except as otherwise provided herein, Lessor shall, at its expense, perform or have performed, or Lessee shall perform at Lessor's expense as required in Subsection 5.C hereof, all maintenance and repairs to, and servicing of the Cars, (exclusive of maintenance and repairs to, and servicing of "User Maintenance Items" described on the Schedule relating to such Cars) as shall be necessary to maintain the Cars in good operating condition as specified in the Interchange Rules, provided, however, that such repair, maintenance and servicing shall be performed at Lessee's expense in the event it was occasioned by the fault of Lessee, results from loading, unloading or use other than permitted under this Agreement, relates to damage resulting from any commodity or material loaded in any Car or arises in those instances in which Rule 95B or any other Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. It shall be the obligation of Lessee to notify Lessor of the need for such maintenance, repairs and servicing, and unless or until Lessor has been notified of the need for same by Lessee, Lessor shall have no obligation to perform such maintenance, repairs and servicing. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operation condition as specified in the Interchange Rules or required by Federal Railroad Administration and/or National Transportation Act Regulations; provided, however, that Lessor may delete any Car from this Agreement if, in Lessor's sole opinion, the cost of such alterations, modifications or replacement of parts exceed the fair market value of such Car.
- B. Lessee agrees, at its expense, to perform or cause to be performed all maintenance and repairs to, and all servicing of all User Maintenance Items as shall be necessary to maintain the User Maintenance Items and the Cars in good operating condition and repair and in accordance with the standards and specifications of the Interchange Rules. In addition, Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for cardable damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damage to the Cars which may be caused by any shipper on Lessee's lines.
- C. Notwithstanding the provision of Subsection 5.A above, Lessee shall be obligated to perform, or cause to be performed, all maintenance, repairs and servicing within the scope of Exhibit A attached hereto, together with all maintenance, repairs and servicing to or of the Cars as are required by Subsection 5.B of this Agreement to be performed at Lessee's expense; provided however, that with respect to the maintenance, repairs and servicing to be performed by Lessee at

Lessor's expense, Lessee shall obtain Lessor's consent to same prior to commencing performance. With respect to the Cars, any repairs performed by the Lessee or a foreign road at Lessor's expense, shall be at a labor rate not to exceed the prevailing AAR labor rate unless a different labor rate is mutually agreed upon in writing by the parties hereto. Should the AAR Mechanical Department inspect or investigate Lessee's maintenance facilities and determine that restitution is due owners of equipment repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all equipment owned or managed by Lessor, including the Cars that were repaired at Lessee's facilities. Lessee will promptly notify Lessor of the need for any repairs, alterations, improvements or additions to any Car that are beyond the scope of Exhibit A attached hereto but which do not exceed the repairs allowed by the applicable AAR Interchange Rules to facilitate continued immediate use of the Cars (the "Extensive Repairs"), and Lessee shall not make any such Extensive Repairs to any Car without Lessor's prior written consent. The Lessor and Lessee both recognize that obtaining consent for each individual Car repaired where the repair is defined as "extensive" is logistically impractical. However, Lessee agrees with the intent of the clause, namely, that no extensive repairs to groups of Cars will be planned or performed without prior consultation of the Lessor. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property without prior approval from Lessor. All such repairs shall be performed under the direction and control of Lessor. Lessee shall be liable to Lessor for any and all costs or losses incurred by Lessor due to any unnecessary or unauthorized repair, alteration, improvement or addition. Lessor shall have the right to cause Extensive Repairs to the Cars to be performed at an independent repair facility, or a location on Lessee's property which is mutually agreeable to Lessor and Lessee. Title to any alteration improvement or addition shall be and remain with Lessor.

- D. Lessee shall, and hereby does, guarantee that, upon termination or expiration of this Agreement, each Car shall meet or exceed specifications for interchange service as defined in the AAR Interchange Rule 88 and shall be in a condition suitable for accepting the loads for which such Cars were originally designed.
- E. Lessor will, if available supply Lessee with general and brake arrangement drawings along with builder's specifications for the Cars described on each Schedule.

6. Insurance

During the term of this Agreement, Lessee shall insure or self-insure the Cars for physical damage and against liability imposed by law for injury to, or death of, persons or damage to or destruction of property arising out of the use and operation of the Cars to the same extent, in the same manner and according to the same policies and practises as it the Lessee's practise in respect to the Lessee's own equipment. Lessee's shall name Lessor as additional named insured. Lessee's policies shall be primary to any other valid and available insurance ("Other Insurance").

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7. Taxes

Lessee assumes responsibility for and agrees to pay, protect, defend, hold harmless and indemnify Lessor and its successors against taxes, levies, impost or duties of any nature together with penalties, fines or interest thereon imposed on, incurred by or asserted against: (1) the Cars, (2) the sale, lease, sublease or delivery of the Cars, (3) revenues earned by the Cars, including but not limited to mileage charges and/or car hire revenue, during the term of this Agreement, including all taxes imposed by any local, provincial, state or national government, except ad valorem property taxes, taxes on paid-up capital or income earned by Lessor.

8. Storage

During the Term of this Agreement, as long as there is sufficient room on Lessee's railroad tracks, Lessee shall, at its expense and if deemed necessary by Lessor, store the Cars on its railroad tracks. In the event that Lessee's capacity to store any or all of the Cars on Lessee's railroad tracks is impaired at any time, then Lessee shall be responsible for the following with respect to each Car that Lessor directs to be stored: (i) all reasonable transportation costs incurred to move the Cars to a storage location; (ii) all reasonable transportation costs incurred in removing the Cars from the storage location; and (iii) the actual costs incurred for the storage. If Lessor pays for any costs referred to in this Section, Lessee shall reimburse Lessor for such cost within ten (10) days from Lessee's receipt of Lessor's invoice. Lessor shall assist Lessee so as to minimize Lessee's exposure under this Section.

9. Rent

- A. Lessee agrees to pay Lessor the amount of fixed rental ("Fixed Rental") specified in any Schedule attached hereto with respect to the Cars described in such Schedule.
- B. In addition to Fixed Rental payable pursuant to Subsection 9.A above, Lessee shall pay to Lessor, as additional rent hereunder, the monthly maintenance portion ("Service Factor") specified in any Schedule attached hereto with respect to the Cars described in such Schedule. The Service Factor shall be adjusted on the first day of each Schedule lease year ("Schedule Lease Year") by a percentage equal to the percentage change in the Repair Index (as defined on Exhibit B hereto) during each Schedule Lease Year. For example, the formula for computing the percentage change in the Service Factor as of the first day of any Schedule Lease Year shall be as follows:

$$\begin{array}{rcccl} \text{Service Factor} & & \text{Service Factor} & & \text{Repair Index on 1st day} \\ \text{for Schedule} & & \text{specified on} & & \text{of Schedule Lease Year} \\ \text{Lease Year} & - & \text{Schedule} & \times & \text{-----} \\ & & & & \text{Repair Index on} \\ & & & & \text{Commencement Date} \end{array}$$

- C. At the end of each Schedule Lease Year, Lessee shall determine the

number of miles that the Cars, in the aggregate, set forth on such Schedule traveled on average during such Schedule Lease Year, loaded and empty. If it is determined that the Cars traveled on average in excess of the "Maximum Mileage" set forth on the Schedule during such Schedule Lease Year, Lessee shall pay to Lessor as additional rent for each Car an amount equal to the "Per Mile Rate" set forth on such Schedule for each mile in excess of the Maximum Mileage traveled on average by each such Car during such Schedule Lease Year.

- D. Lessee shall be invoiced monthly for amounts payable pursuant to Subsections A and B, and Lessee shall pay all such invoices within thirty (30) days from the invoice date.

10. Casualty and Condemnation

- A. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Car with similar equipment upon prior written notice from Lessor to Lessee.
- B. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Car, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- C. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section.

11. Possession and Use

- A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent the Cars are customarily used in the railroad freight business as set forth in Subsection 11.C. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of or financing on the Cars which are the subject of this Agreement. Accordingly following notice to Lessee from any such secured party or owner that an event of default has

occurred at any time (including at a time prior to the effective date of this Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.

- B. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may in good faith and by appropriate proceedings, contest the application of any such act, rule, regulation or order in any reasonable manner at the expense of the contesting party.
- C. The use of the Cars shall be limited to use by a rail common carrier. Lessee shall not remove Lessee's railroad marks from any Car, or change any mark on any Car, without the prior written consent of Lessor. During the term of this Agreement, the Cars shall at all times be registered in the Official Railway Equipment Register and the UMLER.
- D. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising through it, on, or with respect to the Cars or any interest therein, or in this Agreement or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 8.A hereinabove, Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

12. Default

- A. The occurrence of any of the following events shall be an event of default:
 - (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;
 - (ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;
 - (iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or (b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions

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of indebtedness, or extensions of indebtedness;

(iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency;

(v) Any action by Lessee to discontinue rail service on a substantial portion of its track or to abandon any of its rail properties that affect the revenues earned by the Cars.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate but Lessee obligations under this Agreement shall not terminate; and thereupon Lessee shall, if any Car is then loaded and if directed by Lessor to do so, unload the said Car or Cars within a reasonable time from such direction. Lessee shall deliver to Lessor each Car that is unloaded at the time of termination within thirty (30) days thereafter and each other Car within thirty (30) days after it becomes unloaded. Delivery shall be made by Lessee to Lessor at an interchange point or points designated by Lessor and thereafter Lessor shall have the right to the use and possession of the Cars and to grant the use and possession of the Cars to others on such terms and conditions that the Lessor in its sole discretion and judgement deem satisfactory and all income received by the Lessor from the exercise of such use and possession or the granting of such use and possession to others less all costs and expenses incurred by the Lessor, including reasonable attorneys' fees, in enforcing or exercising its forgoing rights shall be applied to all amounts due to the Lessor from the Lessee under the terms of this Agreement and any deficiency shall be paid to Lessor by Lessee on demand.

13. Return of the Cars

A. Upon the expiration of the Agreement pursuant to Section 2 hereof, or upon the early termination of this Agreement with respect to any Car, Lessee shall promptly return such Car to Lessor as follows:

- (i) If some or all of the Cars are to be delivered to Lessor at Lessee's lines, Lessee shall be responsible for any transportation costs incurred in moving such Cars to the Lessee's lines subsequent to the time of expiration or early termination. Lessee shall, at Lessor's option, further provide Lessor, with up to ninety (90) days free storage on its railroad tracks for any expired or terminated Car in order for Lessor to arrange for the disposal thereof, after which any storage shall be provided at Lessee's customary rate.
 - (ii) If some or all of the Cars are to be delivered to Lessor at a location other than Lessee's lines, the cost of assembling, delivering, storing and transporting each Car to such location shall be borne by Lessee if this Agreement is terminated early due to the provisions of Section 9 hereof, in which case such cost shall be borne by Lessee.
- B. Remarking, with respect to each Car, shall include the following: (a) removal of existing markings from the Car; (b) complete cleaning subsequent to the removal of markings; (c) application of new markings reasonably designated by Lessor; (d) any transportation involved in moving each Car to and from a suitable work area to perform the remarking set forth in this Subsection.

14. Indemnities

- A. LESSEE SHALL INDEMNIFY AND SAVE HARMLESS LESSOR FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, AWARDS, ACTIONS AND PROCEEDINGS BY WHOMSOEVER MADE, BROUGHT OR PROSECUTED, AND FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, OR EXPENSES SUFFERED OR INCURRED BY LESSOR OR ITS EMPLOYEES INCLUDING INJURIES, AS WELL AS THOSE RESULTING IN DEATH, AND DAMAGE TO OR DESTRUCTION OF CARS WHEN SUCH LOSS, DAMAGES, EXPENSES OR INJURIES IS/ARE OCCASIONED BY THE FAULT OF LESSEE, OR OCCUR WHILE ONE OR MORE CARS ARE IN LESSEE'S POSSESSION OR CONTROL, OR IN THOSE INSTANCES IN WHICH THE AAR INTERCHANGE RULES WOULD ASSIGN RESPONSIBILITY FOR LOSS OR DAMAGE TO LESSEE PROVIDED, HOWEVER, WHEN LESSOR'S EMPLOYEES AND/OR AGENTS ARE ON THE PREMISES OF LESSEE TO INSPECT THE CARS OR THE RECORDS OR LESSEE PURSUANT TO SUBSECTIONS 4.B, 5, 6, 7, OR 16 HEREOF, LESSEE SHALL BEAR RESPONSIBILITY FOR ANY LOSS, DAMAGES, EXPENSES OR INJURIES, INCLUDING INJURIES RESULTING IN DEATH, TO SUCH PERSONS TO THE EXTENT ONLY THAT LESSEE, ITS EMPLOYEES AND/OR AGENTS CAUSE OR CONTRIBUTE THERETO.
- B. SUBJECT TO SUBSECTION 14.A, AND EXCEPT AS OTHERWISE STIPULATED IN THIS AGREEMENT, LESSOR SHALL INDEMNIFY AND SAVE HARMLESS LESSEE FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, AWARDS, ACTIONS AND PROCEEDINGS BY WHOMSOEVER MADE, BROUGHT OR PROSECUTED, AND FROM AND AGAINST ANY AND ALL LOSS, DAMAGES, OR EXPENSES SUFFERED OR INCURRED BY LESSEE OR ITS EMPLOYEES, INCLUDING INJURIES, AS WELL AS THOSE RESULTING IN DEATH, AND DAMAGE TO OR DESTRUCTION OF THE CARS, USUAL WEAR AND TEAR EXCEPTED, INCLUDING BUT NOT LIMITED TO THOSE BROUGHT, PROSECUTED, SUFFERED OR INCURRED AGAINST OR BY LESSEE IN CONNECTION WITH THE LEASING OR RETURN OF THE CARS, USE, MAINTENANCE, REPAIR, REPLACEMENT OR OPERATION OF THE

CARS OR THE CONDITION OF THE CARS, PROVIDED; HOWEVER, THAT THE FOREGOING INDEMNITY SHALL APPLY ONLY TO THE EXTENT TO WHICH LESSOR, ITS EMPLOYEES AND/OR AGENTS CAUSED OR CONTRIBUTED TO SUCH CLAIMS, DEMANDS, EXPENSES, AWARDS, ACTIONS, PROCEEDINGS, LOSS, DAMAGES, EXPENSES OR DESTRUCTION.

15. Representations, Warranties, and Covenants

Lessee, on the date hereof and on the date of Delivery of each Car that becomes subject hereto, represents and warrants to Lessor as follows:

- A. Lessee is a corporation duly organized, validly existing, in good standing under the laws of Canada pursuant to which it is incorporated and, insofar as is material to Lessor's rights under this Agreement, has the corporate power, authority and, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- B. The entering into and performance of this Agreement will not violate any judgement, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.
- C. There is no action or proceeding pending or threatened against Lessee before any court, or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected.
- D. There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition, or any material portion of the properties of the Lessee or the ability of Lessee to perform its obligations under this Agreement.

16. Inspection

Lessor shall have reasonable access to the physical inspection and examination of any Car located on Lessee's lines to ensure Lessee's compliance with its obligations hereunder upon prior reasonable notice to Lessee. Lessor shall, however, have the right to inspect any Car which is not located on Lessee's lines without providing prior notice to Lessee. Lessor shall not unreasonably interfere with the movement of any Car as a result of such inspection.

17. Miscellaneous

- A. This agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that Lessee may not without the prior written consent of Lessor, assign this Agreement or any of its rights hereunder or sublease any Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 8 of this Agreement.
- C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint sale or venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars, except as a Lessee only.
- D. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power, or remedy available to Lessor nor shall any waiver, or indulgence by Lessor or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This agreement shall be governed by and construed according to the laws of the State of California.
- F. Lessee shall notify Lessor as soon as is practicable of any accident connected with the malfunctioning or operation of the Cars, including in such report, where available, the time, place and nature of the accident and the damage caused.
- G. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car.
- H. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States or Canadian mail, postage prepaid, certified or registered, or when transmitted and received by telex, addressed to:

Lessor at: Itel Rail Corporation
55 Francisco Street
San Francisco, California 94133
Attn: President

Lessee at: Chief of Transportation
CP Rail
P.O. Box 6042
Station "A"
Montreal, Quebec H3C 3E4

or at such other address to which either party may from time to time designate by such notice in writing to the other.

- E. The covenants, obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.
- F. This Agreement represents the entire agreement of the parties and supercedes all prior arrangements, agreements, representations and understandings of the parties with respect to the equipment discussed herein, whether written or oral. This Agreement shall not be modified, altered, or amended, except by an agreement in writing signed by both of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date set forth above.

ITEL RAIL CORPORATION

By: [Signature]
Title: President and CEO
Date: July 17, 1989

CANADIAN PACIFIC LIMITED

By: [Signature]
Title: Vice-President
Date: JUN 29 1989

[Signature]
for Chief of Transportation

[Signature]
ASSISTANT SECRETARY

RECEIVED
AS TO FORM
[Signature]

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 17th day of July, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Amtrak Irel Rail Corporation, that the foregoing Lease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged today that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



PROVINCE OF QUEBEC)
) ss:
COUNTY OF HOCHELAGA)

On this 6th day of JULY, 1989, before me personally appeared P. BERNADET, to me personally known, who being by me duly sworn says that such person is ASSISTANT SECRETARY of Canadian Pacific Limited, that the foregoing Lease was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged today that the execution of the foregoing instrument was the free act and deed of said corporation.

Andee Hunt
Notary Public, in and for the Province of
Quebec, Canada. My commission is for life.

EXHIBIT A

Running Repairs:

Air Brakes	Draft Gears
Air Hose	Grab Irons
Air Hose Supports	Hand Brakes
Angle Cocks	Hatch Cover Repair (Not Replacement or Hatch Cover
Brake Beams and Levers	Knuckles/Pins
Brake Connecting Pin	Load Divider Repair (Not Replacement of Center Plate
Brake Head Wear Plates	Operating Levers in Brackets
Brake Shoes	Outer Gate Repair (Not Outer Gate Replacement
Brake Shoe Keys	Roller Bearing Adapters
Center Plate Repair (Not Replacement of Center Plate)	Sill Steps
Cotter Keys	Slack Adjusters
Couplers	Train Lines
Coupler Carriers	Truck Springs
Door Hardware	Wheels
	Yokes

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EXHIBIT B

Repair Index

$$\begin{aligned}\text{Repair Index} = & 8 \times \text{Cost per RAC Job Code 1840} \\ & + 10 \times \text{Cost per RAC Job Code 4450} \\ & + .5 \times \text{Cost of Wheel Turning} \\ & + .5 \times \text{Cost of Wheel Refurbishment}\end{aligned}$$

- A) "RAC Job Code" means the Job Code as published quarterly by the Railway Association of Canada ("RAC") in the "Car Repair Billing - Billing Regulation Price Matrices" and any revisions, amendments and supplements thereto issued from time to time by the RAC.
- B) "Cost of Wheel Turning" means two (2) times RAC Job Code 2816 (3) minus two (2) times RAC Job Code 2816 (average credit) plus RAC Job Code 3160.
- C) "Cost of Wheel Refurbishment" means two (2) times RAC Job Code 2816 (3) minus two (2) times RAC Job 2816 (average credit) plus RAC Job Code 3180 plus two (2) times RAC Job Code 3085.

